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ATTORNEYS FOR DEFENDANTS, LOEWS PHILADELPHIA HOTEL, INC., TWELFTH STREET HOTEL ASSOCIATES, LP, LPH PARTNER, INC., LOEWS HOTELS HOLDING CORPORATION AND PHILADELPHIA HOTEL OPERATING COMPANY, INC.

ELENA MYERS COURT, Plaintiff, v. LOEWS PHILADELPHIA HOTEL, INC.; TWELFTH STREET HOTEL ASSOCIATES, LP; LPH PARTNER, INC.; LOEWS HOTELS HOLDING CORPORATION; PHILADELPHIA HOTEL OPERATING COMPANY, INC.; LLB GYM, LLC d/b/a 12TH STREET GYM and/or 12FIT GYM AND SPA; FRANK BAER; 12FIT LLC; and, JEROME McNEIL, Defendants.	UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA No. 2:16-cv-04848

ANSWER OF DEFENDANTS, LOEWS PHILADELPHIA HOTEL, INC., TWELFTH STREET HOTEL ASSOCIATES, LP, LPH PARTNER, INC., LOEWS HOTELS HOLDING CORPORATION AND PHILADELPHIA HOTEL OPERATING COMPANY, TO PLAINTIFF'S COMPLAINT WITH AFFIRMATIVE DEFENSES AND CROSS CLAIM AGAINST CO-DEFENDANTS, LLB GYM, LLC d/b/a 12TH STREET GYM AND/OR 12FIT GYM AND SPA, FRANK BAER, 12FIT LLC AND JEROME MCNEIL

Defendants, Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, Inc., by and through their counsel, POST & SCHELL, P.C., hereby respond to the allegations contained in Plaintiff's Complaint and aver as follows:

1. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in

this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

8. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

9. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

10. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

11. Admitted upon information and belief.

JURISDICTION AND VENUE

12. It is admitted only that diversity of citizenship exists between the parties. The remaining allegations contained in this paragraph of Plaintiff's Complaint are denied.

13. Admitted.

NATURE OF THE CASE

14. Denied. It is specifically denied that Jerome McNeil was at any time relevant hereto employed by any of the Loews entities. By way of further answer, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of Plaintiff's Complaint, and accordingly said allegations are denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

15. Denied. The allegations of reckless indifference to the safety and well-being of the Plaintiff and other patrons, failure to supervise, failure to have adequate safeguards, policies and procedures to prevent harm and the re-victimization, belittlement and embarrassment of the Plaintiff and her mother are denied. Jerome McNeil was not employed at any time relevant hereto by any of the Loews entities. By way of further answer, after reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

16. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

BACKGROUND FACTS
The Relationship Between the Defendants

17. Denied. It is admitted only that 12th Street Hotel Associates, LP was the owner of the Loews Hotel located at 1200 Market Street, Philadelphia, Pennsylvania at all times relevant hereto.

18. Admitted.

19. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

20. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

21. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

22. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

23. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

24. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

25. The averments contained in this paragraph pertain to a Defendant other than Answering Defendants and, accordingly, no responsive pleading is required.

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27. The averments contained in this paragraph pertain to a Defendant other than Answering Defendants and, accordingly, no responsive pleading is required.

28. The averments contained in this paragraph pertain to a Defendant other than Answering Defendants and, accordingly, no responsive pleading is required.

29. The averments contained in this paragraph pertain to a Defendant other than Answering Defendants and, accordingly, no responsive pleading is required.

30. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

31. Denied as stated. To the contrary, the "Agreement of Lease" is a legal document which speaks for itself and any interpretation thereof is specifically denied.

32. Denied as stated. To the contrary, the "Agreement of Lease" is a legal document which speaks for itself and any interpretation thereof is specifically denied.

33. Denied as stated. To the contrary, the "Agreement of Lease" is a legal document which speaks for itself and any interpretation thereof is specifically denied.

34. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

35. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

36. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

The Hiring of Jerome McNeill

37. Admitted upon information and belief.

38. Admitted upon information and belief.

39. Admitted upon information and belief.

40. Admitted upon information and belief.

41. Admitted upon information and belief.

42. Admitted upon information and belief.

43. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

44. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

45. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

46. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

47. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

The Hand & Stone Incident

48. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

49. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

50. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

51. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

52. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

53. Denied. Jerome McNeill was not employed at any time relevant hereto by any of the Loews entities. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

The First Known McNeill Incident at Loews

54. Admitted.

55. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

56. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

57. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

58. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

59. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

60. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in

this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

61. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

62. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

63. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

64. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

65. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

66. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in

this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

67. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

68. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

69. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

70. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

71. Admitted.

72. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

73. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

74. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

75. Admitted.

76. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

77. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

78. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

79. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

80. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

81. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

The Second McNeill Incident at Loews

82. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

83. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

84. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

85. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

86. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

87. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

88. Denied. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, and the same are deemed to be denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

89. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

The Third McNeill Incident at Loews

90. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

91. Admitted upon information and belief.

92. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

93. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

94. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

95. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

96. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

97. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

98. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

99. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

100. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

101. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

102. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

103. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

104. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

105. Denied. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

COUNT I
Assault & Battery

106. Answering Defendant incorporates by reference the preceding paragraphs of its Answer as though the same were set forth herein at length.

107. Denied. Not applicable to Answering Defendants. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

108. Denied. Not applicable to Answering Defendants. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

109. Denied. Not applicable to Answering Defendants. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

110. Denied. Not applicable to Answering Defendants. Strict proof of the truth of the allegations contained in this paragraph is demanded at the time of trial.

COUNT II
Negligence & Negligence Per Se

111. Answering Defendants incorporate by reference the preceding paragraphs of their Answer as though the same were set forth herein at length.

112. – 115. Denied. Strict proof of the truth of the allegations contained in these paragraphs is demanded at the time of trial.

COUNT III
Negligence

116. Answering Defendants incorporate by reference the preceding paragraphs of their Answer as though the same were set forth herein at length.

117.-129. Denied. Strict proof of the truth of the allegations contained in these paragraphs is demanded at the time of trial.

COUNT IV
Negligent Infliction of Emotional Distress

130. Answering Defendants incorporate by reference the preceding paragraphs of their Answer as though the same were set forth herein at length.

131.-143. Denied. Strict proof of the truth of the allegations contained in these paragraphs is demanded at the time of trial.

WHEREFORE, Defendants, Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, Inc., deny any liability whatsoever and demands judgment in their favor and against Plaintiff and all other parties.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendants, Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, Inc., are barred in whole or in part by the superseding conduct, actions, failure to act, omissions and/or criminal actions and crimes of co-Defendant, Jerome McNeill.

SECOND AFFIRMATIVE DEFENSE

Jerome McNeill was not the employee, agent, servant or apparent employee, agent or servant or independent contractor of Answering Defendants at the time at issue in the Complaint.

THIRD AFFIRMATIVE DEFENSE

Any damages and/or losses sustained by the Plaintiff, knowledge of which being expressly denied, was caused by the unforeseen actions or failure to act and/or criminal actions or failure to act of co-Defendant, Jerome McNeill.

FOURTH AFFIRMATIVE DEFENSE

Answering Defendants believe, and therefore aver, that any alleged negligent act and/or any alleged omission on the part of Answering Defendants was not the proximate cause of Plaintiff's alleged injuries.

FIFTH AFFIRMATIVE DEFENSE

Answering Defendants had neither actual nor constructive knowledge of any unsafe or dangerous conditions or individuals on the premises of the Loews Hotel located at 1200 Market Street, Philadelphia, Pennsylvania at any time relevant hereto.

SIXTH AFFIRMATIVE DEFENSE

Answering Defendants plead as an affirmative defense any and all applicable leases, contracts, releases and/or stipulations that existed between the parties and hereby aver that the same provide additional defenses, including the defenses of indemnification, contribution and/or agreement to hold Answering Defendants harmless from any and all alleged claims.

SEVENTH AFFIRMATIVE DEFENSE

At all times relevant hereto, 12th Street Hotel Associates, L.P. owned the Loews Hotel, and leased the retail space and exercise and fitness center located on the 5th level of the premises located at 1200 Market Street, Philadelphia, PA to 12Fit LLC. A true and correct copy of the

Agreement of Lease in effect at the time of the incident at issue is attached hereto as Exhibit "A".

EIGHTH AFFIRMATIVE DEFENSE

Under said Agreement of Lease (Exhibit "A"), the tenant agreed to indemnify the owner and operator of the hotel and their parents, affiliates, subsidiaries, agents and employees from and against all claims, and to name the owner and operator of the hotel and their parents, affiliates, as additional insureds on the policy of insurance issued to the tenant in an amount not less than $5 million. *See* paragraphs 10 and 12 on pages 7-9 of the Agreement of Lease attached hereto as Exhibit "A". Therefore, the tenant, 12Fit LLC, should defend and indemnify Answering Defendants for the legal claims in this lawsuit.

NINTH AFFIRMATIVE DEFENSE

To the extent punitive damages are sought by Plaintiff by Answering Defendants, they do not meet the criteria set forth by the United States Supreme Court in State Farm Mut. Auto Ins.Co. v. Campbell, 123 S.Ct.1513 (2003) and any such award would be violative of the due process clause of the 14th Amendment of the United States Constitution.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to allege any conduct of Answering Defendants sufficient to warrant the imposition of punitive damages under applicable law.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent that any punitive damages sought by the Plaintiff are not reasonably related to the amount of compensatory damages obtained by her, if any, such an award is prohibited under the due process laws of the 14th Amendment of the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

At all times relevant hereto, the gym and spa facilities at issue where the alleged incident occurred involving Jerome McNeill and Plaintiff were in and under the exclusive possession and control of co-Defendant, LLB Gym, LLC d/b/a 12Fit Gym and Spa a/k/a 12Fit LLC and/or 12Fit LLC, the tenant under the Agreement of Lease, which is attached hereto as Exhibit "A", and their agents, servants, employees and independent contractors, including, but not limited to, Jerome McNeill, and said gym and spa facilities are not in the possession and control of Answering Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

12th Street Hotel Associates, LP as the owner of the Loews Hotel property located at 1200 Market Street, Philadelphia, PA, and the leasor under the Agreement of Lease (Exhibit "A") with LLB Gym, LLC d/b/a 12Fit Gym and Spa a/k/a 12Fit LLC and/or 12Fit LLC is the only proper hotel Defendant since it was the owner of the premises and the leasor under the Agreement of Lease (Exhibit "A"), and the other hotel Defendants, Loews Philadelphia Hotel, Inc., LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, should be dismissed.

WHEREFORE, Defendants, Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, Inc., deny any liability whatsoever and demands judgment in their favor and against plaintiff and all other parties.

CROSS CLAIM OF DEFENDANTS, LOEWS PHILADELPHIA HOTEL, INC., TWELFTH STREET HOTEL ASSOCIATES, LP, LPH PARTNER, INC., LOEWS HOTELS HOLDING CORPORATION AND PHILADELPHIA HOTEL OPERATING COMPANY, INC., DIRECTED TO CO-DEFENDANTS, LLB GYM, LLC d/b/a 12FIT GYM AND SPA a/k/a 12FIT LLC AND 12FIT LLC, FRANK BAER AND JEROME MCNEILL

1. Answering Defendants deny they are directly or indirectly liable to Plaintiff or to any other person or entity.

2. If the allegations of Plaintiff's Complaint against Answering Defendants are proven at trial, which allegations are expressly denied, then the alleged incident and any alleged injury, damage or loss sustained by the Plaintiff was caused by the negligence, carelessness, recklessness, intentional actions, breach of duties and/or breach of contract and/or breach of obligations owed to the Plaintiff and to Answering Defendants by 12Fit LLC, LLB Gym, LLC d/b/a 12Fit Gym and Spa, Frank Baer and/or Jerome McNeill, which are each alone liable to the Plaintiff for any alleged injury, damage or loss sustained by Plaintiff.

3. In the alternative, if Answering Defendants are found liable to the Plaintiff or any other person or party, any liability being expressly denied, then for the reasons set forth herein and in Plaintiff's Complaint, which allegations are incorporated herein by reference as though fully set forth herein at length, the above named co-Defendants, 12Fit LLC, LLB Gym, LLC d/b/a 12Fit Gym and Spa, Frank Baer and/or Jerome McNeill, are liable over to Answering Defendants on Plaintiff's claims and/or jointly and severally liable to Plaintiff with Answering Defendants and/or are liable to Answering Defendants by reason of common-law and contractual contribution, indemnity or otherwise for the full amount of any sums that may be adjudicated against Answering Defendants.

4. On or about December 2, 2013 Answering Defendant, 12th Street Hotel Associates, LP entered into an Agreement of Lease with 12Fit LLC for the rental of retail space on the 5th level of the Loews Philadelphia Hotel at issue in this lawsuit. A true and correct copy of the Agreement of Lease is attached hereto as Exhibit "A".

5. Said Agreement of Lease was in full force and effect at the time of the incident at issue in this lawsuit.

6. The tenant under the Agreement of Lease, 12Fit LLC is also known as LLB Gym, LLC d/b/a 12Fit Gym and Spa, a Defendant in this lawsuit.

7. Per the Agreement of Lease, the owner and president of 12Fit LLC a/k/a LLB Gym, LLC d/b/a 12Fit Gym and Spa is Frank Baer, a Defendant in this lawsuit. Defendant, Frank Baer, was authorized to sign the Agreement of Lease on behalf of 12Fit LLC is also known as LLB Gym, LLC d/b/a 12Fit Gym and Spa.

8. The Agreement of Lease provides that the tenant, 12Fit LLC, "shall use and occupy the premises solely for the operation of (i) a deluxe health club fitness center (the 'fitness center'), and (ii) a deluxe spa and beauty salon (the 'spa') and for no other purposes." *See* Exhibit "A", page 1, paragraph 3.1(a).

9. The Agreement of Lease provides that among the services to be provided by the tenant "only by qualified and (if required) licensed personnel of Tenant" shall be "full range of massage therapies..." Exhibit "A", page 2, paragraph 4.1. The service at issue in this lawsuit is massage services allegedly provided by co-defendant Jerome McNeil.

10. The Agreement of Lease provides that the tenant "shall provide all personnel necessary to assure the efficient and proper operation of the Fitness Center and Spa (the 'Employees') in accordance with the requirements of this Lease. All Employees shall be employees of Tenant only and shall be trained, hired, instructed and directed by Tenant … Neither Owner nor Operator shall pay any of the salaries of Employees ... "Exhibit "A", page 3, paragraph 5.1.

11. The Agreement of Lease provides in paragraph 10 entitled "**Tenant's Liability Insurance. Property Loss**" that at tenant's "own cost and expense" the tenant shall "provide and maintain, at all times during the term of this Lease, the following insurance":

> 10.2 "(a) Commercial General Liability insurance naming Tenant and Tenant's affiliates as additional insureds, and an endorsement naming Owner, Operator and their respective parents, subsidiaries and affiliates as additional insureds, providing for limits of not less than $5,000,000 with combined single limits for personal injury, including death and property damage, and shall provide coverage for claims brought worldwide. Coverage shall include Broad Form Contractual Liability, Products and Completed Operations and a 'per location' aggregate endorsement."
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> **********
>
> 10.3 "All of the foregoing insurance shall be primary and non-contributory, contain a waiver of subrogation clause in favor of Owner and Operator, and their respective parents, subsidiaries and affiliates, ... All such insurance, with the exception of Worker's Compensation and Professional Liability, shall name Owner, Operator (and such other parties as may be required by Owner), and their respective parents, subsidiaries and affiliates as Additional Insureds ...."

See Exhibit "A", pages 7, 8.

12. The Agreement of Lease further provides in paragraph 10.3 that the tenant's: "liability under this Lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. **In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonable withheld.**" [*Emphasis added.*] *See* Exhibit "A", page 8.

13. The Agreement of Lease provides in paragraph 12:

> **"Indemnification"** that the tenant "will indemnify, defend and save harmless the Owner, Operator" of the Loews Hotel:

> "and their respective parents, affiliates, subsidiaries, agents and employees, from and against any and all liability, loss, damage, expenses, costs of action, suits, interest, fines, penalties, claims and judgments arising from injury, or claim of injury, during the Term of this Lease to person or property of any and every nature and from any matter or thing growing out of the occupation, possession, use, management, improvement, alternation or control of the Premises or any part thereof by Tenant, Tenant's agents, contractors, employees, invitees or licensees, including the fixtures and appurtenances therein during the term of the Lease, or arising out of Tenant's failure to perform fully and promptly each and every covenant, term, condition and agreement herein provided (whether or not this Lease shall contain other specific indemnity provision with respect to such covenant, term, condition or agreement) to be performed by Tenant; provided, however, that Tenant shall not be obligated to indemnify Owner, Operator or any other party from claims arising solely from such party's gross negligence or willful misconduct."

See Exhibit "A", page 9. **This lawsuit does not arise out of the sole liability, sole gross negligence or sole willful misconduct of answering defendants.**

14. By reason of the foregoing terms of the Agreement of Lease regarding insurance in paragraphs 10.2 and 10.3 and indemnification and duty to defend in paragraphs 10.3 and 12, answering defendants maintain that co-defendant LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LLC and/or 12FIT LLC, and/or its insurance carrier(s) are required to defend and indemnify answering defendants, for the plaintiff's claims set forth in this lawsuit.

15. By reason of the foregoing Agreement of Lease provisions (Exhibit "A" hereto), answering defendants demand that LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LC and/or 12FIT LLC, and their insurance carrier(s) defend and indemnify answering defendants for the plaintiff's claims set forth in this lawsuit.

16. By reason of the foregoing Agreement of Lease provisions (Exhibit "A"), the failure of LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LL and/or 12FIT LLC and/or their insurance carrier(s) to defend and indemnify answering defendants for this lawsuit

constitutes breach of contract which entitles answering defendants to recover from LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LLC and/or 12FIT LLC and/or their insurance carrier(s) the costs and attorney's fees necessarily expended to defend this lawsuit which have been and shall be incurred by answering defendants and/or their insurance carrier(s) and any monies necessary to settle plaintiff's claim or pay any award or judgment in her favor against answering defendants.

17. By reason of the foregoing Agreement of Lease provisions (Exhibit "A"), the failure of LLB Gym, LLC d/b/a 12 Fit Gym and Spa d/b/a 12FIT LLC and/or 12FIT LLC and/or their insurance carrier(s) to defend and indemnify answering defendants for this lawsuit constitutes breach of contract which entitles answering defendants to recover from LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LLC and/or 12FIT LLC and/or their insurance carrier(s) the costs and attorney's fees necessarily expended to pursue the within crossclaims and/or a separate declaratory judgment action against LLB Gym, LLC d/b/a 12 Fit Gym and Spa a/k/a 12FIT LLC and/or 12FIT LLC and/or Jerome McNeill for breach of contract.

WHEREFORE, Defendants, Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation and Philadelphia Hotel Operating Company, Inc., demand judgment against Defendants, LLB Gym, LLC d/B/A 12Fit Gym and Spa a/k/a 12Fit LLC and 12Fit LLC, Frank Baer and Jerome McNeill, who are liable over to Answering Defendants on the Plaintiff's claims for contribution and indemnity, breach of contract and/or are jointly and severally liable to the Plaintiff with Answering Defendants and/or are liable over to Answering Defendants by way of contribution, indemnity, breach of contract or otherwise for the full amount or part of any judgment that may be entered against Answering Defendants, together with the costs and attorney fees incurred to defend this lawsuit and to pursue the within Cross Claims for breach of contract and/or a separate declaratory judgment action based on the terms and provisions of the Agreement of Lease cited herein above, attached hereto, and made a part hereof, as Exhibit "A".

POST & SCHELL, P.C.

BY: ______________________________
CHARLES W. SPITZ, ESQUIRE
Attorneys for DEFENDANTS,
Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation, Philadelphia Hotel Operating Company, Inc.

DATED: November 7, 2016

CERTIFICATE OF SERVICE

CHARLES W. SPITZ, ESQUIRE hereby states that a true and correct copy of the foregoing Answer, Affirmative Defenses and Cross Claim to be electronically filed with the Court and served electronically by the Court upon counsel of record.

POST & SCHELL, P.C.

BY: ______________________________

DATED: November 7, 2016

CHARLES W. SPITZ, ESQUIRE
Attorneys for DEFENDANTS,
Loews Philadelphia Hotel, Inc., Twelfth Street Hotel Associates, LP, LPH Partner, Inc., Loews Hotels Holding Corporation, Philadelphia Hotel Operating Company, Inc.